

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02600

JESSICA JONES, et al.,

Plaintiffs,

v.

BAIN CAPITAL PRIVATE EQUITY, et al.

Defendants.

Civ. Action No. 2:20-cv-02892

**PARTIES' JOINT MOTION TO WITHDRAW PRIOR MOTION TO AMEND
SCHEDULING ORDERS AND JOINT MOTION FOR ENTRY OF AGREED
AMENDMENT TO SCHEDULING ORDERS**

Plaintiffs and Defendants in the above-captioned cases, through their undersigned counsel, hereby move the Court for entry of agreed amendments to the expert discovery deadlines set forth in the Court's December 16, 2021 Amended Scheduling Orders (*Fusion Elite*, ECF No. 177; *Jones*, ECF No. 175). In light of the parties' agreement on the new expert discovery deadlines proposed in this joint motion, Plaintiffs also move the Court to withdraw their prior motion seeking amendment to those same deadlines should the Court grant this joint motion.

BACKGROUND AND SUPPORT

On April 26, 2022, the *Fusion Elite* and *Jones* Plaintiffs (“Plaintiffs”) moved the Court for an order amending the current deadlines for expert discovery. (*Fusion Elite*, ECF No. 251; *Jones*, ECF No. 288.) Following this motion, counsel for Plaintiffs and Defendants continued meeting and conferring on Plaintiffs’ proposed dates. These discussions resulted in the parties’ reaching agreement on revised proposed amended dates, set out as follows:

Deadline	Current Date	Proposed Compromise
Opening Expert Reports	May 18, 2022	June 20, 2022
Opposing Expert Reports	July 13, 2022	August 26, 2022
Rebuttal Expert Reports	September 12, 2022	October 21, 2022
Expert Witness Depositions	October 12, 2022	November 11, 2022

The parties’ jointly proposed amended expert deadlines would leave the remainder of the dates in the Amended Scheduling Orders unaffected, including the dates for class motions and *Daubert* motions.

The parties submit that the jointly proposed revised expert dates are supported by extraordinary circumstances and by the parties’ professional courtesy in working together to reach agreement. As set out in Plaintiffs’ prior motion to amend the dates, Plaintiffs assert that they need additional time to incorporate certain documentary and deposition evidence into their reports and analyses. (*See Fusion Elite*, ECF No. 251 at PageID 4569.) Without agreeing to any of Plaintiffs’ characterizations in that motion of the reasons for the timing of any particular document production or deposition, Defendants acknowledge that the Court has allowed certain depositions to take place after the close of fact discovery on April 18, 2022, and that the Court has ordered certain third-party productions of documents and data that have not yet occurred. On

April 20, 2022, for example, the Court granted in part a motion to compel Nfinity Athletic LLC to produce transactional data by May 18, 2022. (*See* No. 2:22-cv-02226-SHL-tmp, ECF No. 17.) On April 28, 2022, the Court granted in part a motion to compel Rebel Athletic Inc. to produce transactional data by May 26, 2022. (*See* 2:21-mc-00028-SHL-tmp, ECF No. 37.)

As a matter of professional courtesy, Defendants were willing to work with Plaintiffs on these proposed revised dates to accommodate Plaintiffs' stated need for additional time. Plaintiffs were also willing to work with Defendants to revise the proposed dates from Plaintiffs' initial proposal to better meet the scheduling needs of all parties.

For the reasons set out above, the parties' jointly request that for good cause shown and under the extraordinary circumstances presented here, the Court issue an order extending the expert discovery deadlines as set out in this motion. Should the Court grant this motion, Plaintiffs also request that the Court issue an order acknowledging the withdrawal of their previous motion to extend or otherwise denying that motion as moot.

Dated: May 9, 2022

Respectfully submitted,

/s Matthew S. Mulqueen

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CERTIFICATE OF CONSULTATION

I hereby certify, pursuant Local Rule 7.2(a)(1)(B), that between May 3 and May 6, 2022, I communicated on behalf of Defendants joining in this motion with Eric Cramer, who spoke on behalf the Plaintiffs joining in this motion, via telephone and email, to discuss the relief sought in this motion. Those discussions led to the parties' agreement on the joint revised expert dates set out in this joint motion. I conferred with Brendan Gaffney, counsel for Jeff Webb, on May 6, 2022, via email, who conveyed that Mr. Webb does not oppose the foregoing motion.

s/ Matthew S. Mulqueen